

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WELLS FARGO BANK, N.A., AS TRUSTEE)
FOR THE CERTIFICATE HOLDERS OF)
THE MLMI TRUST, MORTGAGE LOAN)
ASSET BACKED CERTIFICATES, SERIES)
2006-HE1,)

Case No.: 2:16-cv-1591-GMN-VCF

ORDER

Plaintiff

vs.

SPRING MOUNTAIN RANCH MASTER)
ASSOCIATION; NEVADA ASSOCIATION)
SERVICES, INC.; PREMIER ONE)
HOLDINGS, INC.; and WV)
INTERNATIONAL, INC.,)

Defendants.

Lenders and investors have been at odds over the legal effect of a homeowners' association's ("HOA") nonjudicial foreclosure of a superpriority lien on a lender's first trust deed pursuant to Nevada Revised Statutes § 116.3116. *See Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1180 (D. Nev. 2015). The Nevada Supreme Court seemed to have settled the debate in *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014), holding that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *SFR*, 334 P.3d at 419.

However, on August 12, 2016, two members of a Ninth Circuit panel held in *Bourne Valley Court Trust v. Wells Fargo Bank* that Chapter 116's nonjudicial foreclosure scheme "facially violated mortgage lenders' constitutional due process rights" before it was amended in 2015. *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 832 F.3d 1154, 1160 (9th Cir. 2016). As a

1 result, *Bourne Valley* is likely dispositive of this and the hundreds of other foreclosure cases
2 pending in both state and federal court. To save the parties from the need to invest resources
3 briefing the effect of the *Bourne Valley* opinion before the finality of that opinion has been
4 determined, the Court **STAYS** all proceedings in this case pending exhaustion of all appeals of
5 *Bourne Valley*.

6 **I. LEGAL STANDARD**

7 “[T]he power to stay proceedings is incidental to the power inherent in every court to
8 control the disposition of the causes of action on its docket with economy of time and effort for
9 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A trial
10 court may, with propriety, find it is efficient for its own docket and the fairest course for the
11 parties to enter a stay of an action before it, pending resolution of independent proceedings
12 which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.
13 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible
14 damage which may result from the granting of a stay; (2) the hardship or inequity which a party
15 may suffer in being required to go forward; (3) the orderly course of justice measured in terms
16 of the simplifying or complicating of issues, proof, and questions of law which could be
17 expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).
18 However, “[o]nly in rare circumstances will a litigant in one case be compelled to stand aside
19 while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299
20 U.S. at 255. A district court’s decision to grant or deny a *Landis* stay is a matter of discretion.
21 *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.
22 2007).

23 **II. DISCUSSION**

24 At the center of this case are the HOA-foreclosure sale conducted pursuant to Nevada
25 Revised Statutes § 116.3116 and the competing arguments that the foreclosure sale either

1 extinguished the bank's security interest under the *SFR* holding or had no legal effect because
2 the statutory scheme violates due process. Because the Ninth Circuit in *Bourne Valley* held that
3 the scheme was facially unconstitutional, *see Bourne Valley*, 832 F.3d at 1160, the *Bourne*
4 *Valley* opinion and any modification of that opinion have the potential to be dispositive of this
5 case. Under this circumstance, the *Landis* factors weigh strongly in favor of staying this action
6 pending final resolution of the *Bourne Valley* decision. Indeed, the possible prejudice to the
7 parties is minimal as the only potential harm is that the parties may wait longer for resolution of
8 this case if it is stayed. However, if this case is not stayed, a delay would also result from any
9 motions for reconsideration that may be necessitated if the current decision in the *Bourne*
10 *Valley* case does not stand. Accordingly, a stay is not likely to appreciably lengthen the life of
11 this case. Further, in the absence of a stay, judicial resources may be unnecessarily expended to
12 resolve issues which may ultimately be decided by higher courts to which this Court is bound
13 to adhere. Because the *Bourne Valley* decision is squarely on point, the orderly course of
14 justice likewise weighs in favor of a stay. Accordingly, the Court finds that staying this action
15 pending final resolution of *Bourne Valley* would be efficient for the Court's own docket and the
16 fairest course for the parties. *See Leyva*, 593 F.2d at 863.

17 **III. CONCLUSION**

18 **IT IS THEREFORE ORDERED** that this case is administratively **STAYED** pending
19 exhaustion of all appeals of *Bourne Valley Court Trust v. Wells Fargo Bank*, 832 F.3d 1154
20 (9th Cir. 2016). Once exhaustion occurs, any party may move to lift the stay. Until that time,
21 all proceedings in this action are stayed.

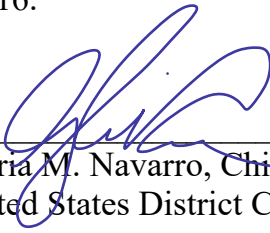
22 **IT IS FURTHER ORDERED** that all pending motions are **DENIED** without prejudice
23 with leave to refile within twenty-one days after the stay is lifted.

24 **IT IS FURTHER ORDERED** that current occupant Premier One Holdings, Inc.
25 ("Premier One") shall care for, preserve, and maintain the Property.

1 **IT IS FURTHER ORDERED** that, beginning on May 1, 2017, the parties must file a
2 joint status report updating the Court on the status of this case every one-hundred and eighty
3 days. Along with the joint status report, Premier One shall submit a statement affirming that all
4 expenses necessary to maintain the property, including but not limited to, timely and full
5 payment of all homeowners association assessments, property taxes, and property insurance
6 premiums due and owing or past due at any time during the effective period of this Stay are
7 current and up to date.

8 **IT IS FURTHER ORDERED** that this Order does not prevent the parties from
9 continuing to engage in settlement conference negotiations with the assistance of the Magistrate
10 Judge.

11
12 **DATED** this 1 day of November, 2016.

13
14 
15 _____
16 Gloria M. Navarro, Chief Judge
17 United States District Court
18
19
20
21
22
23
24
25